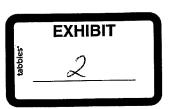
IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

NEW HAMPSHIRE)	
INSURANCE COMPANY,	į	
Plaintiff,)	
v.) Case No.:	08-CV-1326
GREEN DRAGON TRADING)) Judge:	Der-Yeghiayan
COMPANY, c/o Dombrowski &)	· •
Sorensen Attorneys at Law,)	
)	
Defendant.)	

AFFIDAVIT OF SUSAN SMITH

Susan Smith , being first duly sworn on oath, deposes and states as follows:

- 1. I am employed as the Regional Hull Manager Marine Claims Department of AI Marine Adjusters, Inc. ("AI Marine").
- 2. AI Marine is a claims adjusting company that handles all claims for New Hampshire Insurance Company.
- 3. I am responsible for coordinating the investigation and adjustment of the claim made by Joseph Dombrowski and Green Dragon Trading Company with respect to the loss that occurred on November 18, 2007 aboard the M/Y LE VIPER.
- 4. AI Marine first received notice of this loss through International Special Risks ("ISR") on November 20, 2007. This "Report of Loss" included a Property Loss Notice, along with a detailed letter from Joseph Dombrowski describing the incident. A true and correct copy



of the "Report of Loss", which includes Mr. Dombrowski's letter, is attached hereto as Exhibit A.

- 5. On December 7, 2007, I sent a Reservation of Rights letter addressed to Joseph Dombrowski at 670 North Clark Street, Chicago, Illinois regarding this claim. The post office did not return the letter as undeliverable or otherwise indicate that the wrong address was listed. A true and correct copy of the letter is attached hereto as Exhibit B.
- I received a letter from David Weiss dated December 11, 2007, indicating that he 6. represented Mr. Dombrowski and Green Dragon with respect to this claim.
- 7. In December of 2007 and January of 2008, Mr. Weiss and I exchanged several letters relating to the investigation of the loss.
- 8. I received a letter from Mr. Dombrowski dated February 5, 2008, and addressed from his law office in Chicago. In that letter, Mr. Dombrowski indicated that he was the sole shareholder and director of the Western Hemisphere operations for Green Dragon Trading Company, a bearer stock company incorporated in the Isle of Mann. A true and correct copy of the letter is attached hereto as Exhibit C.
- 9. Attached to Mr. Dombrowski's letter dated February 5, 2008 was a repair invoice from R&K Construction, Inc., located in Elk Grove, Illinois. Mr. Dombrowski's letter indicated that the repair invoice was for repairs made to the vessel in response to recommendations made by the marine surveyor.
- 10. On March 3, 2008, I sent a letter to Mr. Dombrowski at his Chicago office, advising that New Hampshire was denying coverage for this loss. The post office did not return the letter as undeliverable or otherwise indicate that the wrong address was listed. A true and correct copy of the letter is attached hereto as Exhibit D.

- 11. I declare under penalty of perjury that the foregoing is true and correct.
- Further affiant sayeth naught. 12.

Signed: Susan South
Executed On: April 23, 2008

16172427850

P.01



International Special Risks, Inc. 50 Salem Street, 3rd Floor **Building B** Lynnfield, MA 01940

Tel: (781) 295-0270 x 291 Fax: (781) 246-7830 E-mail: jpwilliamson@isrinsurance.com

Facsimile Transmittal Sheet

REPORT OF LOSS

Date:

11/20/07

Number of pages including cover (6)

To:

Al Marine Adjusters/Tom Teravainen

Fax:

617-457-6802

From:

J.P. Williamson

RE Customer:

Green Dragon Trading Corp. (Joseph Dombrowski)

Policy No.:

YM5839322

Date of Loss:

11/18/07

LOSS:

Engine Room Flooding / Salvage Claim / Crew Injury

This letter serves as our notice of loss per the above captioned as reported by the Assured. Upon receipt, we ask that you proceed with the adjustment of this matter in accordance with the above policy of insurance. Please forward your acknowledgment of receipt, the assigned claim number, and the name and number of the assigned adjuster at your earliest convenience.

For your file we have attached all of the documents that are available at this time. This office will provide additional information as it is received. Please let us know the information and documentation you require in order to process and handle this claim. I have left a message for the assured requesting a contact number for the Captain and/or the boat. I have also inquired about the Captain's condition and how it relates to this incident. I will provide those details upon receipt.

Should you have any further questions regarding this notice, please do not hesitate to contact the undersigned.

Sincerely,

Asst Claim Manager

EXHIBIT

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DESCRIPTION OF LOSS & DAMAGE (Continued from page 1.)

light appeared. Water was entering the vessel from an unknown location, and had reached the level of the engine room floor boards, causing damages (see attached)

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DOMBROWSKI AND SORENSEN Actorneys at Law

JOSETH L. DOMBHOWSKI JOAN BORIONSEN November 19, 2007

670 N. CLARK CHICARD, LLINOIS GOOD (312) 843-7804

Mestrow Financial Services Atton. Angle

RE: Insured: Green Dragon Trading Company C/o Joseph L. Dombrowski ... Carrier: New Hampshire Insurance Company Policy Number: YM 583-93-22

Dear Angie:

As per our telephone conversation I would like to report a claim relating to the above vessel.

The event happened on November 18, 2007 shour 3 miles from the Ft. Linderdale inlet, in the Atlantic Ocean. I am relating events that occurred as reported by the crew, and have no first hand knowledge of them. The vossel had just reached the location of this incident, from Chicago, and that journey was uneventful until this incident.

According to capt. Osley, the vessel found itself in 6 foot seas when a low oil light appeared. Upon investigation in the engine room, it. was discovered that water was entering the vessel from an unknown location, and had reached the level of the engine room floor boards. Water was coming in faster than the vessels pumps could control it. The Captain disconnected one of the main engines to use it as an additional pump. This still could not control the rising water. The United States Coast Guard appeared, and put a pump into service, and that would just hold the weter at floorboard level.

all of the see cooks were closed, and the main engines turned off. This stopped the flow of water. Meanwhile Sea Tow commond the captain into signing a towing agreement. The vessel was towed to Lauderdale Marina, then the next day, November 19, 2007, it was towed to Roscioli

> FAX NO. (912) 643-1716 E-MAIL pg.dande@mindspring.som

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MESTRUM CLAIRS DEFR Fax:3125956500

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Marina when it is currently situated. The phone number at Rountell is 954-321-1250, with a mailing address of 3201 West State Road 84, Ft. Lauderdale, Florida, 33812. As of the writing of this letter, the cause of the water infiltration has not been determined.

Sea Tow is claiming salvage, and has asked the carrier to contact them. Their number is .54-783-8721. Either Kevin Collins, or Closy are the

I have been further informed that Captain Osley collapsed on the vessel on the afternoon of November 19, 2007; I om unaware of the cause of his collapse, but it could well be caused by his afforce to save the vecel.

etarney At Law

Eux to 312-598-5506

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P.06

NEW HAMPSHIRE INSURANCE COMPANY

Souton, Massachusene

This is a confirmation of Binding. Your request to bind coverage is accepted as per the dates below, subject to an original signed application and a survey if the vessel is 10 years or older. A compliance letter must be received no later than 30 days from this date

Policy No.YM 583-93-22

Binder

Effective Date From: 10/24/2007 to 10/24/2008 at 12:01 a.m. Standard Time at place of issuance.

Producer:

1871011

Named insured:

International Special Risks, Ind.

Green Dragon Trading Company c/o

Aubum Hall, Building III 60 Pineland Drive, Suite 307 Dombrowski & Sorensen Attorney At Law

New Gloucester, ME 04260

670 N. Clark Chicago, IL 60610

Coverage applies to items below only when amount and limits are specified.

Section	Coverage Description	Limits	Deductible	Premium
A	HULL (Agreed Value)	\$1,000,000	\$20,000	\$8,864
	Tender	\$20,000	\$500	Inc.
В	PROTECTION & INDEMNI Longshoremen's & Harbor Worker provided in public act 803 of the 61 Includes coverage for 2 crew.	1 Compensation insurance as	N/A	\$1,457
С	Medical Payments	\$10,000	N/A	inc,
E	Towing	\$2,500	N/A	Inc.
F	Personal Effects	\$10,000	\$250	Inc.
G	Uninsured Boater	\$500,000	N/A	Inc.
H	Fuel Spill Liability	\$800,000	N/A	inc.
Endorse	ements: MAN-6, B-8, Nav-1 Nav-25	5. W-2. W-5. W-1. MAN-3, MAN-1, MAN-2		\$0
		TOTAL PREA	MUM	\$10,121

Description of Vessel: Year Built 1992 Manufacturer; Swiftship

Length: 85 ft Model:

Name: LE VIPER

Hull Serial # 726611

Description of Motors Year Built 1989 Manufacturer: Detroit

Seria# P:16VF8828

Navigation Limits Warranty: Warranted confined to the use and navigation of coastal waters and tributaries thereto of the Atlantic Ocean, Gulf of Mexico, Bahamas and Caribbean Sea from Eastport, Maine to Brownsville, Texas, not south of 10 degrees north latitude. Excluding Colombia, Dominican Republic, Cuba & Haiti.

Countersigned: 10/25/2007 M O Taxloc NY

MARITIME GENERAL AGENCY

The declarations page and endorsements attached hereto, are made part of, and attach to, policy form:BJP 2191-A (80/6)



175 Water Street, 14th Floor New York, New York 10038 Tel. #: 212-458-6513 Fax #: 212-458-6520 E-Mail: <u>Susan, Smith3@AIG.com</u>

December 7, 2007

Mr. Joseph Dombrowski Dombrowski & Sorensen 670 North Clark Chicago, Illinois 60610

RE:

M/V "LE VIPER"

Hull Number:

726611

Insured:

Green Dragon Trading Company

Policy Number: YM 583-93-22

Date of Loss:

November 18, 2007

Dear Mr. Dombrowski:

We have received the 11/19/07 Notice of Loss regarding the above referenced incident wherein the "LE VIPER" sustained an engine systems fallure resulting in the ingress of sea water into the engine spaces. This loss has been reported to have occurred off the coast of Fort Lauderdale, Florida on November 18, 2007. Please be advised that the investigation of this loss is being handled under a full reservation of rights. New Hampshire Insurance Company and its representatives are and will continue to investigate without prejudice under the above captioned policy and reserve all rights and defenses under the said policy of insurance as fully and completely as if we had refused to take any steps whatsoever in the investigation as set out above. For your ready reference, we enclose a copy of the policy for your review with the

Our present understanding is that the failure in the engine room which caused the ingress of sea water was due to the wear and tear, gradual deterioration and/or corrosion of various fasteners on the raw water feed pipe outboard of the starboard engine. We would direct your attention to Section "A" 10(b)(2) relating to "causes of loss that are not covered"

"Any wear and tear, gradual deterioration, weathering, inherent vice, insects, animals, vermin, mold, marine life, electrolytic or galvanic action, corrosion, dampness of atmosphere, gelcoat or fiberglass blistering, wet or dry rot, or extremes of temperature;"

More specifically, should it be determined that this loss was caused by one of the excluded causes, there will be no coverage for any hull/machinery damage or salvage claim under this policy arising our of this incident.

We would also direct you to Endorsement # 5 entitled "Mechanical Breakdown Exclusion"

"It is agreed and understood that this policy does not cover any loss or damage to the yacht's engines, generators, outdrives and running gear (referred to herein as "Propulsion Machinery") resulting directly or indirectly, in whole or in part, from any of the following causes of loss whether such causes directly or indirectly cause, contribute to or aggravate the loss; or occur before, at the same time or after the loss; or whether other causes act concurrently or in any

A Member Company of American International Group, Inc. EXHIBIT

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Case 1:08-cv-01526 Docu

Document 5-3

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Page 2 of 2

sequence with the excluded cause:

- a) mechanical breakdown
- b) latent defect
- c) defect, weakness, inadequacy, fault of unsoundness in:
 - design, specifications, workmanship, construction;
 - materials used in construction or repair;
 - 3) or maintenance:

of any Propulsion Machinery.

However, we do insure for anything resulting loss caused by items a - c unless the resulting loss is itself excluded from coverage. All other terms and conditions still apply."

The above listed exclusions are not exhaustive of all possible exclusions applicable to the present claim and are subject to further investigation.

We would also point out that under the general conditions and exclusions of the insuring agreement under paragraph 7 "Cooperation With Us," you must cooperate with our investigation including providing any requested documentation and parts and preserving and keeping safe all components related to the engine system which failed.

Further to our investigations, we request that you provide us with copies of all documentation reflecting or establishing that all remarks and recommendations as set forth in the May 23 and 24, 2007 survey by Slahkoff, Stahl, Gordon & Associates were complied with as reflected in your October 23, 2007 correspondence to Maritime General Agency.

Please note that New Hampshire Insurance Company expresses and reserves all, and does not waive any, of its rights, whether or not mentioned above, under the policies, law, public policy or law of equity. Nothing hereto for or herein set forth should be construed as an admission on the part of New Hampshire Insurance Company in connection with this claim, or as a waiver, estoppel, or modification of any of the Policy and/or contract terms, exclusions, privileges, powers and conditions, and of New Hampshire Insurance Company's rights, remedies and defenses remain reserved, whether expressly mentioned herein or not.

Should you have any questions regarding this correspondence or any other matter relevant to this claim, please do not hesitate to call us.

Very truly yours,

Susan Smith Regional Hull Manager Marine Claims Department

CC: International Special Risks, Inc. – Attn: J.P. Williamson Fax# 781-246-7830

DOMBROWSKI AND SORENSEN

Attorneys at Law

JOSEPH L. DOMBROWSKI JOAN SORENSEN 670 N. CLARK CHICAGO, ILLINOIS 80610 (312) 949 - 7804

February 5, 2008

AI Marine Adjustors Ms. Susan Smith, Regional Hull Manager 175 Water Street, 14th Floor New York, New York 10038

RE: Assured: Green Dragon Trading Company

Policy Number.: YM 583-93-22

Vessel: LeViper D/A: 11/18/07

Your Ref. No. LE08965

Dear Ms. Smith:

Mr. Weiss had assured me that those items requested in your letters had been forwarded to you.

It seems strange that you now ask my relationship with the insured. It was not a concern of yours when you asked for parts of the vessel to be analyzed, nor a concern of yours when you asked for permission to conduct an inspection. It was not a concern of yours when you agreed to furnish the metallurgist report. Now it is evidently a concern.

In any event, Green Dragon Trading Company is a corporation organized under the laws of the Isle of Mann. It is a bearer stock company. I am also director of its' Western Hemisphere operations, and one of its attorneys. Mr. Weiss is the lead attorney. Does that clarify any questions you may have regarding that issue?

Enclosed please find the bill from the contractor for the completion of all work requested under the survey. I thought you had this in your possession since December of 2007.

I note you had the tow bill, and have refused to give the tow company security to insure

1

FAX NO. (312) 843:1715 E-MAIL jid.dends@mindspring.com



payment thereof, thereby placing the vessel in jeopardy of having a lien placed against it.

I note that you have canceled the policy effective January 14, 2008, but have not seen fit to return the premium paid. Why the delay?

I have repeatedly requested a copy of the metallurgist report that you agreed to provide. If you recall, before we allowed the subject hose clamps to be turned over to your expert, we were assured that we would be given a copy of that report, and it was on that basis that we furnished the suspect hose clamps. Are you now refusing to honor your agreement? If so, please tell us you are not going to honor your agreement. Otherwise, please forward a copy of the report to either myself, Mr. Weiss, or both.

On a similar subject, a joint survey was conducted. Your surveyor represented to our surveyor that compliance with the Slakoff survey was not an issue. Was that a misrepresentation on his part, or a change of position on your part? You might further recall these events happened in the State of Florida.

You were to furnish a copy of your surveyor's report. To date, we have not received it. Do you intend to keep your word, and furnish it?

What other information would you like provided to you to assist in the investigation of this claim?

Sincerely,

JOSEPHAL HOMBROWSKI

Attorney At Law

Fax to 212-458-6520

Mailed

CC: International Special Risks, Inc. - Attn. J. P. Williamson Fax to 781-246-7830

Parrillo, Weiss & O'Halloran Atten. Mr. David J. Weiss

R & K CONSTRUCTION, INC. P.O. BOX #87 ELK GROVE, ILLINOIS 60007

847 439 0655

FAX 847 439 0702

July 29, 2007

CLIENT: Joseph Dombrowski 670 N. Clark Street Chicago, Il 60610

JOB LOCATION VIPER

Work with Captain Dan Osley to Complete All Jobs Requested by Boat Surveyors

TOTAL: \$4,000.00

Case 1:08-cv-01326

Document 5-4

Filed 03/07/2008

Page 1 of 4



175 Water Street, 14th Floor New York, New York 10038 Tel. #: 212-458-6513 Fax #: 212-458-6520

E-Mail: Susan.Smith3@AIG.com

March 3, 2008

VIA CERTIFIED AND REGULAR MAIL

Certified Mail No.: 70063450000146609575 Green Dragon Trading Company

c/o Mr. Joseph Dombrowski Dombrowski & Sorensen 670 N. Clark Chicago, IL 60610

Re:

M/Y LE VIPER

Insured:

Green Dragon Trading Company

Policy No.: Date of Loss:

YM 583-93-22 November 18, 2007

Our Reference No.: LE08965

Dear Mr. Dombrowski:

Our office has been investigating the above claim pursuant to the Reservation of Rights issued on December 7, 2007. As part of our investigation we have, on several occasions, requested information from both you and your attorney, Mr. Weiss, as the representative of the insured. We have received responses to some of our requests for information, but many of the requests have still gone unanswered. Based on the information we have been provided thus far, we hereby advise you that New Hampshire denies coverage under Executive Yacht Policy No. YM 583-93-22 ("the Policy") for this claim for the reasons set forth below.

It is our understanding that on November 19, 2007, Captain Dan Osley, his son Sean, and two others were cruising on the M/Y Le Viper ("the vessel") about 500 yards from land, heading north toward Ft. Lauderdale, Florida. The engine room began taking on water. The US Coast Guard was called, and Towboat US also responded. The Coast Guard pump was not sufficient to cope with the ingress of water, and Towboat US ultimately used eight pumps to stem the flow of water. A flexible raw water hose had come adrift off of the starboard engine as the result of the failure of two hose clamps, and was reattached. The vessel was then towed up the New River to Rosciolli Marine. Costs associated with the salvage total \$24,051.00.

The Policy contains the following relevant provisions:

- CAUSES OF LOSS THAT ARE NOT COVERED: 10.
- B. We shall not cover any loss or damage arising out of:

A Member Company of American International Group, Inc. **EXHIBIT**

- (1) Intentional Acts: Any intentional misuse or misconduct, criminal, willful or malicious act or lack of reasonable care or due diligence, in the operation or maintenance of your yacht, tender or trailer;
- (2) Any wear and tear, gradual deterioration, weathering, inherent vice, insects, animals, vermin, fungus or mold, marine life, electrolytic or galvanic action, oxidation, warping or shrinkage, corrosion, dampness of atmosphere, gel coat or fiberglass blistering, wet or dry rot, or extremes of temperature;

Endorsement #5

Mechanical Breakdown Exclusion

It is agreed and understood that this policy does not cover any loss or damage to the yacht's engines, generators, outdrives and running gear (referred to herein as 'Propulsion Machinery') resulting directly or indirectly, in whole or in part, from any of the following causes of loss whether such causes directly or indirectly cause, contribute to or aggravate the loss; or occur before, at the same time or after the loss; or whether other causes act concurrently or in any sequence with the excluded cause:

- a) mechanical breakdown
- b) latent defect
- c) defect, weakness, inadequacy, fault or unsoundness in:
 - 1) design, specifications, workmanship, construction:
 - 2) materials used in construction or repair;
 - 3) or maintenance:

of any Propulsion Machinery.

However, we do insure for any resulting loss caused by items a-c unless the resulting loss is itself is excluded from coverage. All other terms and conditions still apply.

The marine surveyor who conducted an investigation following the loss, as well as the metallurgist who conducted a metallurgical analysis of the hose clamps, concur that the loss was caused by the failure of the hose clamps due to stress corrosion. The Policy specifically does not cover loss or damage arising out of "wear and tear, gradual deterioration, ... corrosion" (Sect. 10(B)(2)). The hose clamps failed due to their deteriorated and corroded condition, which is explicitly not covered under the Policy, and is not a fortuity which the Policy would have otherwise covered. Therefore, there is no coverage for this loss.

In addition, the failure to replace the deteriorated and corroded hose clamps indicates a lack of reasonable care and due diligence in the maintenance of the vessel, for which coverage is excluded pursuant to Section 10(B)(1). Any damage to the propulsion machinery in the engine room was directly caused by defects or inadequacy

of maintenance of the propulsion machinery, and is further excluded under the Mechanical Breakdown Exclusion.

Further, the faulty condition of the vessel at the time of the loss may be in breach of the implied warranty of seaworthiness that is part of the Policy, which would also void coverage for this loss.

In conclusion, there is no coverage for this loss under the Policy and New Hampshire is not responsible for any repair, salvage or other costs associated with this loss. For these reasons, this claim is hereby denied. Finally, as New Hampshire denies this claim, the insured will be responsible to pay the costs of the salvage. A copy of the invoice from TowBoat US is enclosed for your use in that regard. Please be advised that no past, present or future action of New Hampshire or its agents in investigating or considering these claims for coverage can or should be deemed as a waiver or modification of this Denial of Coverage, or of any policy terms, warranties and conditions and any rights it has under the applicable law, and, New Hampshire hereby reserves all of its rights under the Policy and the applicable law.

Very truly yours,

Susan Smith / Regional Hull Manager

Marine Claims Department

Enclosure

cc:

David J. Weiss

Parillo, Weiss & O'Halloran

Case 1:08-cv-01ა∠6

Document 5-4

Filed 03/07/20ud

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Invoice

 Date
 Invoice

 12/13/2007
 07-1891

Offshore Marine Towing, Inc 560 NE 26th Court Pompano Beach, FL 33064 Ph. 954-783-7821 Fax. 954-783-9009 www.towboatusftlauderdale.com

Bill To:
M/Y Le Viper
Green Dragon Trading Company

C/O Dombrowski & Sorensen 670 North Clark Street

Chicago, IL 60610

Service Date Service	Description TowPost IS # >	Qty	Rate	Amour
11/18/2007 11/18/2007 11/18/2007 11/18/2007 11/18/2007 11/18/2007 11/18/2007 11/18/2007 11/18/2007 11/18/2007 11/18/2007 1/18/2007	TowBoatUS # 2 response and return. TowBoatUS # 4 response and return.	3 5 5.5 5 3 5 2 2 6 1 1 9 1 2 6 6 6 6 6 6 1.5		2,250.0 2,600.0 2,860.0 3,750.0

We Appreciate Your Business!

Total \$24,051.00